

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

**WALTER J. LEAVEL,**  
**Plaintiff,**

**v.**

**CAROLYN W. COLVIN,**  
**Commissioner of Social Security,**

**Defendant.**

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) **Civil Action No. 5:12cv073**

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) **By: Michael F. Urbanski**

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**United States District Judge**

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**ORDER**

This matter was referred to the Honorable Robert S. Ballou, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for the proposed findings of fact and a recommended disposition. The magistrate judge filed a report and recommendation on January 13, 2014, recommending that plaintiff's motion for summary judgment be denied, the Commissioner's motion for summary judgment be granted and the Commissioner's final decision be affirmed. Plaintiff has filed objections to the report and recommendation.

The court has reviewed the magistrate judge's report, the objections to the report, and the pertinent portions of the administrative record, and, in so doing, made a de novo determination of those portions of the report to which the plaintiff objected. The court finds that the magistrate judge was correct in concluding that there is substantial evidence in the record to support the ALJ's determination that plaintiff was capable of sedentary work and that he is not disabled. Plaintiff objects on the basis that the magistrate judge erred in concluding that evidence presented to the Appeals Council was neither new nor material, and that the case should be remanded to the Commissioner for consideration of that evidence. In particular, plaintiff focuses on the treatment records and opinions of Dr. Michael Brookings. In the report and

recommendation, the magistrate judge carefully and thoroughly reviewed the evidence submitted to the Appeals Council, including that of Drs. Brookings and Nelly Maybee, and concluded that this evidence was neither new nor material. The court has considered this objection and agrees with the magistrate judge's assessment of the evidence submitted to the Appeals Council. As such, the court overrules the objections to the report and recommendation. Accordingly, the court accepts the magistrate judge's recommendation that the Commissioner's decision should be affirmed.

It is therefore **ORDERED** and **ADJUDGED** that plaintiff's motion for summary judgment (Docket # 14) is **DENIED**, that the Commissioner's motion for summary judgment (Docket # 19) is **GRANTED**, plaintiff's objections to the report and recommendation (Docket # 25), are **OVERRULED**, the Commissioner's decision is **AFFIRMED**, and that this matter is **STRICKEN** from the active docket of the court.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

Entered: February 7, 2014

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
United States District Judge